

**MINUTES
of the
FOURTH MEETING
of the
TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE**

**October 14, 2014
Room 321, State Capitol
Santa Fe**

The fourth meeting of the Tobacco Settlement Revenue Oversight Committee (TSROC) was called to order by Representative Elizabeth "Liz" Thomson, co-chair, on October 15, 2014 at 9:40 a.m. in Room 321 of the State Capitol in Santa Fe.

Present

Sen. Cisco McSorley, Co-Chair
Rep. Elizabeth "Liz" Thomson, Co-Chair
Rep. Monica Youngblood

Absent

Rep. Gail Chasey
Sen. John C. Ryan
Sen. John Arthur Smith

Advisory Members

Rep. Kelly K. Fajardo
Sen. Linda M. Lopez
Sen. Mary Kay Papen
Rep. Jim R. Trujillo

Rep. Paul C. Bandy

Staff

Caela Baker, Staff Attorney, Legislative Council Service (LCS)
Amy Chavez-Romero, Assistant Director for Drafting Services, LCS
Julio Garcia, Intern, LCS

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony are in the meeting file.

Tuesday, October 14

Taxation of E-Cigarettes

Karmen Hanson, program manager, health policy, National Conference of State Legislatures, provided a presentation via Skype on the regulation and taxation of electronic cigarettes.

Ms. Hanson summarized existing laws in other states that provide for electronic cigarette or vapor product regulation. She stated that 41 states prohibit sales to minors. Three states, including New Jersey, North Dakota and Utah, have expanded the scope of clean indoor air laws to include restrictions on electronic cigarette and vapor product use. Two states, including Minnesota and North Carolina, specifically tax electronic cigarettes and vapor products. Two other states require child-resistant liquid nicotine packaging. Ms. Hanson indicated that states do not generally include electronic cigarettes and vapor products within the definition of traditional, combustible cigarettes or smokeless products.

Ms. Hanson described the provisions of the federal Family Smoking Prevention and Tobacco Control Act passed in 2009. She said that the act expands the authority of the federal Food and Drug Administration (FDA) to regulate and oversee tobacco products and ingredients. The act also provides the FDA with oversight of the marketing of tobacco products and requires larger warning labels on cigarette and tobacco products packages. She stated that the act preserves the authority of state, local and tribal governments to regulate tobacco products in certain respects, but it also prohibits many state and local requirements that are different from or in addition to certain FDA requirements.

Ms. Hanson explained that the Center for Tobacco Products (CTP) is an entity established by the FDA. She indicated that the FDA has proposed regulations to provide the CTP with oversight of electronic cigarettes and other alternative tobacco and nicotine products.

Ms. Hanson next described the manner in which Minnesota and North Carolina tax electronic cigarettes and vapor products. Pursuant to the Minnesota law, an electronic cigarette is taxable. Cartridges and "e-juice" containing nicotine are also taxable. In Minnesota, reusable and refillable devices for electronic cigarettes and cartridges and e-juice without nicotine are not taxable.

Ms. Hanson stated that in North Carolina, a five-cent tax per fluid milliliter of consumable product is imposed. She indicated that the North Carolina law requires manufacturers to report the amount of consumable products sold on invoices. The tax is estimated to generate more than \$5 million in fiscal year (FY) 2015 through FY 2016. Ms. Hanson said that the North Carolina law does not apply to products regulated by the FDA.

Ms. Hanson briefly addressed the question of whether electronic cigarettes and vapor products are safer than traditional cigarettes. She indicated that there are competing opinions and research reports on the issue. She noted that the federal Centers for Disease Control and Prevention (CDC) reports that while some toxins contained in traditional cigarettes are not present in electronic cigarettes, electronic cigarettes still contain nicotine and might contain other harmful substances. Ms. Hanson stated that it is likely that there will be additional bills and laws introduced regarding regulation of electronic cigarettes, but the number of those bills might decline in light of pending federal regulations.

Update on the Tobacco Use Prevention and Control (TUPAC) Program

Benjamin Jacquez, program manager, TUPAC program, Department of Health (DOH), provided the committee with a number of statistics related to smoking in New Mexico. He stated that 2,200 New Mexicans die annually from smoking, and 42,000 New Mexicans suffer from a smoking-related disease. He explained that the TUPAC program is an evidence-based, statewide tobacco control program with the objective of reducing smoking rates and the incidence of related diseases. He identified some specific goals of the TUPAC program. He stated that the program aims to:

- prevent young people from trying smoking;
- promote smoking cessation;
- eliminate exposure to secondhand smoke; and
- identify and eliminate tobacco-related health disparities among population groups.

According to Mr. Jacquez, the TUPAC program engages in statewide programming, community interventions, mass-reach health communication interventions, cessation interventions and surveillance and evaluation to reach its goals. He identified a number of policy initiatives supported by the TUPAC program, including clean indoor air initiatives, mass media campaigns, telephone support services, co-payment reductions and reminder systems for health care providers. He identified existing tobacco control policy initiatives in New Mexico, including enactment and implementation of the Dee Johnson Clean Indoor Air Act, tobacco products price increases, cessation treatment coverage by insurance companies, clerk-assisted tobacco sales and allocation of Master Settlement Agreement funds to tobacco prevention and control programs. Mr. Jacquez briefly discussed recent municipal ordinances addressing electronic cigarettes.

Mr. Jacquez next addressed how the TUPAC program uses its funding. He stated that for the current fiscal year, \$5.6 million of funding from the Tobacco Settlement Program Fund is used for state and community contracts, while \$1.1 million from a cooperative agreement with the CDC is used for administration and management of the TUPAC program. He stated that the TUPAC program uses CDC guidance documents to select priorities to reach targeted populations at the current funding level.

Mr. Jacquez described the process by which the TUPAC program contracts for services. He stated that the TUPAC program issues requests for proposals for media, cessation, evaluation, population-based and priority population services. Mr. Jacquez provided the committee with a list of the organizations funded through the TUPAC program. He stated that the TUPAC program oversees the contracts through monthly meetings, ongoing technical assistance and use of assigned evaluators. He added that if a contractor is not performing adequately, the contractor could be placed on probationary status, or the affected contract could be terminated. Mr. Jacquez explained that population-based outcomes are tracked using evaluation surveys to measure changes in tobacco-related knowledge, skills, attitudes, social norms, illnesses and deaths.

Mr. Jacquez described the outcomes of the QUIT NOW program. He stated that the initiative has helped smokers obtain access to cessation services and resources. He pointed out that 32 percent of enrollees that were contacted at a seven-month follow-up had quit smoking. The other 76 percent expressed an intention of quitting in the next 30 days. Mr. Jacquez reported that 94 percent of participants were satisfied with their service.

Next, Mr. Jacquez discussed the TUPAC program's efforts to train health care providers. He indicated that online training is available to all health care providers in New Mexico and that 330 new providers have been trained on tobacco screening, brief interventions and referrals to the QUIT NOW program. He further stated that 150 staff and providers for the federal Women, Infants and Children (WIC) program have been trained in New Mexico.

Mr. Jacquez stated that the TUPAC program is leveraging national media campaigns by the CDC to encourage smokers to quit and to reduce secondhand smoke exposure. He noted that multi-unit housing owners are increasingly prohibiting smoking on their properties. He also stated that the Navajo Nation passed a smoke-free resolution affecting 3,000 people in 31 of its 110 chapters.

Mr. Jacquez described the TUPAC program's efforts to prevent tobacco use among young people. He talked about the Twenty-Four-Seven initiative, which provides school tobacco policy toolkits and a "twenty-four-seven" web site to support policy efforts. Mr. Jacquez presented data on the numbers of young people trained as tobacco peer educators and participants in youth tobacco use prevention campaigns. He stated that cigarette smoking among young people dropped by 44 percent between 2005 and 2013 and that cigar smoking among the same group dropped by 42 percent. However, chewing tobacco use remained stable, and hookah tobacco use increased.

Mr. Jacquez said that adult cigarette smoking decreased from 21.5 percent in 2011 to 19.1 percent in 2013, but cigar, chewing tobacco and hookah tobacco use remained unchanged. He stated that 10 percent of adults report using vapor or electronic cigarette products. Mr. Jacquez highlighted other statistics on adult cigarette use. He stated that 36,000 fewer New Mexico adults are smoking cigarettes and that the average number of cigarettes smoked per day has dropped from 17 to 11. In 2013, 19 percent of smokers consumed a pack or more per day, compared to 45 percent of smokers 10 years earlier.

Mr. Jacquez identified a number of challenges for the TUPAC program. He said there are still 300,000 adults and 21,000 young people who smoke cigarettes, and that smoking rates are proportionately higher among certain population groups. He also indicated that there is continued exposure to secondhand smoke on tribal lands, multi-unit housing and various educational and work campuses. He also indicated that the use of hookah tobacco is high among young people, and the effects of emerging products are unknown. He also said that noncombustible tobacco products are relatively affordable.

Mr. Jacquez indicated that there are some concerns about the emergence of the use of electronic cigarettes and other vapor devices. He indicated that such products promote youth experimentation and could result in the use of multiple types of tobacco products. He also stated that there is a concern about whether electronic cigarettes could result in an adverse impact on cessation efforts. Mr. Jacquez stated that there are plans to include questions in surveys to monitor electronic cigarette use among young people and adults.

Upon questioning from committee members, Mr. Jacquez indicated that no one seeking tobacco cessation services through the TUPAC program is turned away. Some committee members suggested that funding for services available through Medicaid should be considered in an analysis of all funding sources available for tobacco cessation efforts. The committee members also asked questions about payments received and the services provided by health maintenance organizations. Some committee members asked for a comparison between payments received and the services provided by health maintenance organizations. Another committee member requested more specific information on the costs of services provided by health maintenance organizations. Committee members also discussed potential differences between Medicaid and non-Medicaid funding sources and between tobacco cessation and tobacco control.

A committee member commented on potential benefits of investment of the Tobacco Settlement Permanent Fund and use of investment earnings for tobacco cessation programs. Committee members asked about the DOH's decision to hire some out-of-state entities, rather than in-state entities, for contractual services. Mr. Jacquez explained that the DOH uses a request for proposals process and that any selected out-of-state entities obtained the highest scores through that process.

In response to a question from a committee member, Mr. Jacquez stated that funding recommended by the CDC for tobacco control programs does not include Medicaid and Medicare funding. A committee member commented that the DOH has realized success in tobacco cessation considering that the funding level for the TUPAC program is below the funding level recommended by the CDC and that many high-risk factors for tobacco use are present in the state. Another committee member commented that part of the reduction in tobacco use rates could be attributed to Medicaid funding. A committee member requested information from the DOH with respect to the cessation rates attributable to certain levels of spending in tobacco cessation programs. Committee members further discussed differences in funding sources for tobacco cessation and tobacco prevention. A committee member stated that Medicaid funding is used for treating the health effects of tobacco, instead of tobacco use prevention. Committee members asked for additional research on federal funding levels for Medicaid tobacco cessation.

A committee member asked Mr. Jacquez about any existing studies on the effects of clean indoor air laws on children. Mr. Jacquez said he was not aware of any studies but would follow

up on that question. Committee members also asked about the price of cigarettes in New Mexico compared to other states, such as California.

A committee member inquired whether statistics presented by the DOH of smoking levels among disabled persons include persons with mental illnesses. James Padilla, DOH, responded that the statistics include people who identify themselves as having a disability and could include those with mental illnesses. Committee members also asked about the use of nicotine patches in tobacco cessation efforts. In addition, committee members asked about what funding levels would be necessary to make each school in New Mexico a tobacco-free school. Mr. Jacquez indicated that the DOH would seek to obtain that information.

Committee members also asked whether there are any restrictions regarding hookah use in the state. Mr. Jacquez said there are no restrictions on hookah bars. Committee members also asked about coordination between the TUPAC program and the WIC program. Mr. Jacquez briefly discussed the role of the DOH in training WIC participants.

A committee member asked about any recommendations for increases in funding for tobacco cessation programs. Ruby Ann Esquibel, analyst, Legislative Finance Committee, indicated that recommendations for a proposed flat budget for the DOH are being considered, with the exception of an increase in the proposed budget for the DOH facilities management program. A committee member asked about existing DOH budgeting for advertising for tobacco cessation. Mr. Jacquez indicated that the budget is approximately \$2 million.

Update on DOH Programs

Judith Gabriele, program manager, DOH, Diabetes Prevention and Control program, provided an overview of the work of the program. Ms. Gabriele pointed to statistics of growth in diabetes cases among New Mexicans. She indicated that in 2012, there were 528,250 New Mexico adults with prediabetes, constituting 35 percent of all adults in New Mexico. She also provided data on diabetes death rates by New Mexico region and stated that diabetes death rates are most prevalent in the northwest and southeast regions of the state.

Ms. Gabriele stated that 2012 costs associated with diabetes and prediabetes in New Mexico were approximately \$2.1 billion. She provided a brief overview of the DOH's FY 2014 operating budget for the Diabetes Prevention and Control program. She provided a summary of the manner in which tobacco settlement revenues were spent in FY 2014. According to Ms. Gabriele, the funds were spent as follows:

- \$81,800 for diabetes prevention;
- \$191,700 for diabetes management;
- \$160,500 for coordinated chronic disease prevention and control; and
- \$71,400 for epidemiology and data-gathering.

Ms. Gabriele provided examples of the outcomes of various diabetes prevention and control programs. For instance, she discussed results of national and community-based programs that resulted in weight loss, increased exercise and healthy meal preparation among participants. Ms. Gabriele also discussed outcomes of diabetes management programs and stated that 84 percent of enrollees completed chronic disease and diabetes self-management programs. She also indicated that the DOH provided training to 330 professionals in FY 2014.

Ms. Gabriele described the process followed by the DOH in evaluating performance of diabetes prevention and control programs. She stated that in-house evaluations are conducted. In addition, contractor narrative reports are obtained. She also indicated that ongoing oversight of contractors is provided through site visits, emails, direct observation and monitoring of invoices. Ms. Gabriele stated that if a contractor does not meet expectations, contracts are amended or terminated with appropriate notice.

Gena Love, program manager, DOH, Breast and Cervical Cancer Early Detection (BCC) program, provided statistics on women with breast cancer in New Mexico. She said each year, 1,450 women are diagnosed with invasive breast cancer and that 260 women die from the illness. She stated that mammograms provide the most effective strategy for detecting early stage breast cancer, but disparities exist among women of different ethnicities and income levels. She stated that tobacco settlement funds help the BCC program address those disparities.

Ms. Love explained that tobacco settlement funds are allocated for the provision of mammograms, primarily to women between the ages of 40 and 49. She also said that there are 18 existing provider agreements for mammography service providers located throughout the state. In FY 2014, 752 women were served with tobacco settlement funds. Ms. Love added that those funds are not used for overhead costs.

Ms. Love stated that tobacco settlement funds help the BCC program to serve more women, serve younger women and make the three-to-one match required by the CDC. She explained that CDC funds only serve 18 percent of the eligible population and require allocation of a majority of funds for women over 50 years old. Ms. Love stated that in FY 2014, tobacco settlement funds were used for three patients diagnosed with invasive breast cancer and one patient diagnosed with ductal carcinoma in situ. She said that every woman receives case management services to ensure that appropriate treatment is received after diagnosis.

Ms. Love provided the committee with an overview of the funding sources for the BCC program. In FY 2015, over \$3 million of funding for the program came from federal sources; \$871,751 was contributed by the state; \$128,600 was attributable to tobacco settlement revenue funds; and \$45,000 was attributable to two grants from the Susan G. Komen Breast Cancer Foundation.

Next, Ms. Love summarized the eligibility requirements for the BCC program. Participants must be 30 years of age or older, have incomes of 250 percent or less of the federal

poverty level, lack health insurance or have health insurance with high deductibles and lack Medicaid Part B or Medicaid coverage. She stated that if participants are diagnosed with breast cancer, a case manager works with the Medical Assistance Division of the Human Services Department to enroll Medicaid-eligible women and provide access to treatment.

Ms. Love stated that since its establishment in 1991, the BCC program provided comprehensive breast and cervical cancer screening and diagnostic services to more than 150,700 women statewide, including provision of 277,900 breast exams and 1,458 diagnoses of breast cancer. According to Ms. Love, last year, the program served 10,094 women, resulting in diagnoses of 70 women with invasive breast cancer and 16 women with in-situ breast tumors.

Andrew Ganz, manager, DOH, HIV Prevention program, provided the committee with an overview of the work of the DOH in HIV, sexually transmitted disease and hepatitis reduction and prevention. He stated that funding for the hepatitis and harm reduction programs has remained flat over the past few years. He explained that 11 percent of contracts for the hepatitis program are attributable to tobacco settlement revenues used for contracts. Tobacco settlement revenues account for 34 percent of funding for contracts for the harm reduction program.

Mr. Ganz discussed some data pertaining to the hepatitis program. He said that in FY 2014, 5,162 doses of the hepatitis A and B vaccines were provided to high-risk clients and that 6,620 laboratory tests were performed. He stated that HIV counseling, testing and referral services are integrated with hepatitis outreach activities. In addition, Mr. Ganz stated that other services include distribution of clean syringes; HIV counseling, testing and referral; and overdose prevention and education services. Naloxone, also known as Narcan, is distributed to treat opiate overdoses.

Mr. Ganz indicated that each year, more than two-thirds of participants in the statewide syringe services program attempt to enroll in alcohol or drug use treatment programs. He also stated that the DOH's overdose prevention program is rapidly growing and is one of the largest programs of its kind in the country. Mr. Ganz said that in 2013, the program assisted with 709 successful overdose reversals.

The committee members asked a number of questions following the presentations by the DOH staff members. A committee member inquired about the potential for abuse of Naloxone. Mr. Ganz explained that the drug is difficult to misuse, since it is rarely self-administered. Committee members asked about participation between the DOH and police departments with respect to overdose prevention and education services. Mr. Ganz stated that police departments have been supportive of the DOH's efforts.

A committee member asked whether the DOH provides outreach to public schools with respect to diabetes prevention. Ms. Gabriele described efforts to promote increased exercise and consumption of healthier foods among students. She also explained there are initiatives to permit students to use school exercise facilities outside of regular school hours. A committee member

inquired about the efforts of the DOH to assist the family members of students in diabetes prevention programs. Ms. Gabriele pointed out that in one particular initiative, family members became involved with students in a walking program. In response to another question, Ms. Gabriele stated that she would provide the committee members with information on the amounts spent for diabetes prevention among different population groups and geographical areas.

A committee member asked whether information provided by drug or alcohol users served by the DOH included information on their first substances of use. Mr. Ganz responded that the data collected by the DOH only pertain to substances currently used by those individuals. He also stated that existing data show that many individuals use heroin upon their first use of injection equipment. He added that heroin is often cheaper to use than prescription opiates. A committee member asked whether new types of heroin are becoming more lethal to users than before. Mr. Ganz responded that some batches of heroin could be laced with other products, making the drug more dangerous.

A committee member asked why the handout presented by the DOH showed approximately one-third fewer women served by the BCC program in FY 2014 than in FY 2010. Ms. Gabriele stated that the reduced number could be attributable to the number of women enrolled in other programs. She added that one out of five women is eligible for services under the BCC program. In response to a committee member's question, Ms. Gabriele stated that Medicaid funds are often available to pay for treatment in cases where program participants have been diagnosed with cancer. She also stated that it is expected that cancer screening rates will increase with the expansion of Medicaid.

Electronic Cigarettes and Harm Reduction

Dr. Joel Nitzkin, senior fellow in tobacco policy, R Street Institute, provided the committee with articles he authored pertaining to electronic cigarettes. He indicated that for the last several decades, cigarettes have been the predominant vehicle for nicotine delivery. He stated that in addition to nicotine, cigarettes contain other harmful substances.

Dr. Nitzkin stated that cigarettes burn at high temperatures and contain high amounts of nicotine and tar materials that are absorbed by the bodies of cigarette smokers. He stated that electronic cigarettes deliver nicotine to the bodies of users in liquid form and provide satisfaction of the urge to smoke among users. He stated that electronic cigarette use, relative to conventional cigarette use, could result in a 99 percent reduction in the risk of fatal illnesses. He said the "hit" associated with electronic cigarettes is not as attractive to some users as that available from conventional cigarettes. Dr. Nitzkin added that flavoring has not attracted young people to electronic cigarette use.

Dr. Nitzkin stated that in 2011 and 2013, there have been significant reductions in conventional cigarette use among teenagers and adults. He commented that there could be some relationship between those reductions and electronic cigarette use.

Dr. Nitzkin indicated that 85 percent of the smoke created by a conventional cigarette comes off of that product. However, he stated that smoke is not expelled as secondhand smoke from an electronic cigarette. He stated that while there might be some trace quantities of heavy metals and other toxic substances present in electronic cigarettes, those amounts are not measurable. He also stated that the amounts of nicotine possibly expelled to individuals other than the user do not have a significant effect on those individuals. Dr. Nitzkin said that those amounts of nicotine are similar to the trace amounts of nicotine contained in vegetables.

Dr. Nitzkin stated that some studies have indicated that flavoring is not more attractive to teenagers than to adults. He added that flavoring is found to make adults less likely to crave conventional cigarettes.

Dr. Nitzkin outlined a number of his recommended policy considerations. He stated that many in the electronic cigarette industry support a prohibition on sales of electronic cigarettes to minors. He added that since other nicotine products, such as nicotine lozenges, inhalers, patches and gums, are available to minors and often contain flavoring, those products should be treated in a manner that is consistent with electronic cigarettes.

Dr. Nitzkin recommended that if it is found that electronic cigarettes are beneficial to public health, they should be taxed in a manner similar to other consumer products or other non-cigarette nicotine delivery products. He also briefly discussed policy considerations regarding restrictions on the places of use of electronic cigarettes. Finally, Dr. Nitzkin suggested that electronic cigarettes could be viewed as a low-cost harm reduction mechanism to reduce the number of people who smoke.

A committee member commented that some studies have revealed that cessation rates for electronic cigarette and nicotine patch users have been similar and that many adults have used electronic cigarettes to quit smoking. Another committee member asked whether electronic cigarettes are considered to constitute tobacco cessation tools. Dr. Nitzkin responded that while studies that suggest electronic cigarettes could be tied to improved cessation rates, they are not categorized as tobacco cessation tools.

Committee members asked about whether electronic cigarettes satisfy nicotine cravings. Dr. Nitzkin noted that electronic cigarettes might satisfy nicotine cravings. He added that some individuals with mental health disorders have identified some benefits to using electronic cigarettes. However, he stated that some smokers have found that electronic cigarettes do not completely satisfy their cravings for nicotine.

A committee member expressed doubt as to whether electronic cigarettes would be more effective than pharmaceuticals and health education programs in reducing nicotine use. Dr. Nitzkin expressed support for education programs but questioned whether money spent on pharmaceuticals would effectively increase cessation rates. He added that some data suggest that electronic cigarette use has contributed to decreases in nicotine use.

A committee member asked about any affiliations between the electronic cigarette industry and the tobacco industry. Gregory Conley, American Vaping Association, stated that 30 to 35 percent of electronic cigarette products come from large tobacco companies. Committee members expressed a desire for an independent examination of the chemical components of electronic cigarettes. Dr. Nitzkin stated that about two-thirds of electronic cigarette manufacturers are not associated with tobacco companies and that many major operators have posted information on their web sites regarding electronic cigarette ingredients. In response to a question about tobacco industry studies regarding tobacco cessation rates among teenagers, Dr. Nitzkin stated that CDC data and other studies suggest that electronic cigarettes do not attract teenagers as continuing users. A committee member inquired about the entities that fund the R Street Institute.

A committee member asked if studies that tied electronic cigarettes to reduced death rates specifically tested electronic cigarette use. Dr. Nitzkin indicated that much data were based on use of products with similar nicotine levels, but those products were not electronic cigarettes. In response to another question, Dr. Nitzkin indicated that the products in electronic cigarettes are not standardized. A committee member expressed concern with any conclusion that electronic cigarettes have less nicotine than conventional cigarettes, since the products contained in electronic cigarettes are not standardized. Committee members also questioned whether lower levels of nicotine in electronic cigarettes would prompt more electronic cigarette use and whether children would be attracted to electronic cigarette flavoring. A committee member expressed concern that since electronic cigarettes are fairly new, there might be a lack of long-term data of the effects of electronic cigarette use. In response to another question, Dr. Nitzkin stated that there are few studies in mainstream American medical journals with regard to the effects of electronic cigarette use.

In response to a committee member's question, Mr. Conley said that a package of nicotine gum costs about \$20.00, while electronic cigarettes costs about \$40.00 to \$50.00 for a two-week supply. He noted that nicotine gum is often placed on lower shelves and that store surveillance systems are not set up to assist in monitoring sales of such products to children.

A committee member asked about any pharmaceutical groups that support electronic cigarettes, and Dr. Nitzkin named the American Association of Public Health Physicians. Committee members asked about the availability of electronic cigarette sales data. Dr. Nitzkin stated that there are few data available. In response to another question, he stated that electronic cigarette liquid was previously widely made in China. Currently, he said that cigarette liquid is rarely imported.

A committee member asked about Dr. Nitzkin's previous statement, indicating that individuals with mental illnesses have benefited from electronic cigarette use. He indicated that electronic cigarettes often satisfy the nicotine cravings of those individuals.

Public Comment

Dr. Donna Upson, faculty, University of New Mexico, stated that the FDA has not found electronic cigarettes to be effective in reducing smoking rates. She added that electronic cigarette use is increasing rapidly among middle and high school students. She further expressed concern about certain information provided with respect to harm reduction impacts of electronic cigarettes. Dr. Upson also expressed support for FDA oversight of electronic cigarettes. She stated that last February, 2,400 cases of nicotine poisoning were reported and that half of those cases involved children under the age of five years old. Dr. Upson next presented an example of an internet advertisement for electronic cigarettes. She expressed concern with the marketing of electronic cigarettes to young people.

Mr. Conley provided the committee with written comments. He stated that a study of a group of former smokers shows that most of them attributed quitting smoking to the use of electronic cigarettes. Mr. Conley stated that a recent study found that more than 60 percent of adults using vapor products preferred the flavored options. He added that in the United Kingdom, 2.1 million electronic cigarette users identify themselves as former smokers. He further expressed concern that when electronic cigarettes are viewed as harmful, conventional cigarette users could be discouraged from quitting conventional cigarettes. Mr. Conley also stated that tobacco products and electronic cigarettes should be viewed as distinct products. He encouraged legislators to avoid providing for taxation of electronic cigarettes in the same bill as any proposed ban on the sale of electronic cigarettes to minors. Finally, Mr. Conley stated that if an additional tax is to be imposed on electronic cigarettes, the tax on cigarettes should be significantly increased.

Freddie Olsen stated that he is the owner of a vapor store. He stated that his business contributes to the economy by paying taxes and paying rent in a previously vacant facility. He urged committee members not to equate vaping businesses with the tobacco businesses. He stated that his business helps transition customers out of conventional cigarette use. Mr. Olsen additionally stated that 90 percent of his customers use e-liquid and that 40 percent are using the lowest amount of nicotine available in electronic cigarettes.

Sandra Adondakis, American Cancer Society, commented that the emergence of electronic cigarettes could distract from best practices recommended by the CDC. She suggested continued consideration of increased tobacco taxes, expansion of the Dee Johnson Clean Indoor Air Act and continued funding for tobacco cessation programs.

Joanna Struther, American Lung Association, expressed support for electronic cigarette being defined as "tobacco products" and stated that a new definition for vapor products should not be created.

Ellie Choate expressed support for laws favorable to electronic cigarette products. Ms. Choate stated that she would discourage removal of the option of electronic cigarette use as an

alternative to conventional cigarette use. Representative Thompson stated that the committee was not considering the possibility of banning the sale of electronic cigarettes

Summary of Findings of the Tobacco Use and Employer Costs Task Force

Heather Balas, president and executive director, New Mexico First, provided the committee with a description of the background of the task force established pursuant to Senate Memorial 22 in 2013. The memorial called for the "formation of a task force to study the relationship between tobacco use and employer costs, including the impacts on organizations that employ tobacco users". The task force was asked to recommend changes in law to minimize losses in workplace productivity and costs associated with tobacco use. Ms. Balas explained that New Mexico First was asked to manage the task force. She mentioned that a number of legislators and representatives from a number of disciplines were task force members.

Ms. Balas and Dr. Denise Gonzales, Presbyterian Healthcare Services, a task force member, summarized the 12 recommendations of the task force. The recommendations include legislative policy recommendations, funding and tax policy recommendations and voluntary employer or insurer recommendations. Ms. Balas discussed the first three recommendations of the task force, including recommendations to modify the Employee Privacy Act to:

- permit businesses to choose whether to hire smokers;
- allow employers in certain sectors, such as health care and education, to choose whether to hire smokers; and
- allow employers to prohibit smoking off-premises during work hours, including during breaks, meal times and when employees are working off-site.

Dr. Gonzales summarized the remaining nine recommendations. The recommendations include:

- requiring all health insurance plans to include evidence-based comprehensive treatment for tobacco dependence in their benefit packages;
- asking the appropriate legislative committee to evaluate wellness programs, with a focus on smoking cessation programs;
- funding tobacco use prevention and cessation programs at the level recommended by the CDC;
- reinstating tobacco cessation and prevention funding for collaborative work with tribes and the Indian Affairs Department;
- increasing the cigarette tax;
- increasing taxes on other tobacco products and electronic cigarettes; and
- providing tax incentives for employers offering evidence-based tobacco cessation programs.

A committee member asked about any funding sources for New Mexico First and whether funding sources are made public. Ms. Balas indicated that New Mexico First's funding

sources are public information and that the contract for New Mexico First's work on managing the task force was funded by Presbyterian Healthcare Services. In response to another question from a committee member, Ms. Balas affirmed that, pursuant to the Employee Privacy Act, it is against the law for an employer to ask a potential employee whether he or she smokes.

Approval of Minutes

Upon a motion made and seconded, the minutes of the third meeting of the TSROC were approved.

Adjournment

There being no further business, the TSROC adjourned at 4:05 p.m.